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ABSTRACT

This report presents information from 11 hearings in five California cities on pay inequities affecting many working women. It begins with a general discussion of the wage gap as a persistent fact of life. Causes of differences in male/female pay are considered, including gender segregation in jobs, labor market conditions, employee characteristics, content of work, union membership, and prevailing wage rates. The next section offers a brief history of the concept of equal pay for work of comparable value. Case histories are provided, and the four essential elements of the comparable worth statute passed by the California State Legislature are described. Critical questions related to the concept of comparable worth are then addressed, including job evaluation, costs, supply and demand as a determinant of wages, and collective bargaining. A section on job evaluation describes the four most common types now practiced and provides descriptions of job evaluation processes in three actual work settings. A final section looks ahead and considers social implications of comparable worth and the role trade unions can play. Appendixes include ordering information for hearing transcripts, a listing of individuals and organizations submitting testimony, texts of major current laws, and the legal context for comparable worth. (YLB)

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PAY INEQUITIES FOR WOMEN:

COMPARABLE WORTH AND OTHER SOLUTIONS

A REPORT AND SUMMARY OF 1981 HEARINGS

SAN FRANCISCO
LOS ANGELES
SACRAMENTO
FRESNO
EUREKA

Co-Sponsored By:

The California Commission on the Status of Women
The Department of Industrial Relations
The Fair Employment and Housing Commission
The Department of Fair Employment and Housing

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CALIFORNIA COMMISSION ON
THE STATUS OF WOMEN
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NOTE: These hearings and the months of study and discussion which followed were conducted during the tenure of Irene Hirano as chairperson of the California Commission on the Status of Women.

The comparable worth study was begun under one executive director—Pamela Faust—and completed under her successor, Lee Novick.

Special thanks to Executive Secretary Patrice Van Pelt, whose patience and hard work transformed stacks of tapes into nine volumes of hearing transcripts.

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INTRODUCTION

On January 27, 1981, the California Commission on the Status of Women, the Department of Industrial Relations, the Department of Fair Employment and Housing, and the Fair Employment and Housing Commission convened a series of statewide hearings on pay inequities affecting many working women. The four state agencies were already aware of the historic discrepancies in wages between men and women in the labor force. They conceived of the hearings as an opportunity for additional substantiation and statistical data, realistic testimony, and serious discussion of solutions to narrow the earnings gap.

The hearings consisted of eleven sessions divided among five cities—San Francisco, Los Angeles, Sacramento, Fresno and Eureka. Two hundred and eight individuals and organizations were invited to testify; 183 actually appeared. There were almost 3,000 pages of transcripts in nine volumes, encompassing oral testimony, supporting documentation, and other material submitted by a range of national and international sources.

Before the hearings began, the sponsoring agencies prepared a list of questions that they hoped the hearings would answer. The questions were:

1. What are the options for bridging the wage gap between men and women, besides comparable worth? Will the gap ultimately narrow on its own, as women move into male-dominated occupations and vice versa?
2. Are there job evaluation systems that work? If so, how and why?
3. Are there alternatives for formal job evaluation systems that could become the basis of a pay equity system?
4. Is an objective job evaluation system a realistic expectation?
5. Is there a demonstrable link between job segregation and wage discrimination?
6. What are the estimated costs of instituting comparable worth in dollars, in productivity, in resource utilization?
7. What are the other possible impacts of comparable worth?
8. What is the legal basis for pay equity?
9. What is the most effective avenue to resolving pay inequities—legislation? regulation? litigation? public education? collective bargaining?
10. What are the viewpoints on pay equity and comparable worth? Is labor of one mind on the issue? Employers? Does the opinion vary from industry to industry?
11. Is comparable worth an issue that will be addressed first in the public sector or in the private? Why?

After the hearings were over, it required several months to study all the information that had been collected. It became clear that these hearings did not answer the eleven questions listed above, but they did advance the process of delineating issues and identifying the most significant areas of concern.

The concept of setting salaries on the basis of equal pay for work of comparable worth continues to be the focus of great controversy. The testimony at the hearings was often heated, and it was readily apparent that the questions are both sweeping and complex, the issues are often emotional, and the state of the economy makes resolution more difficult still.

In the period since the hearings, the issue of comparable worth has come into even more prominence. The California Legislature has passed legislation that introduces the concept of pay equity into state civil service. More women employees, union or non-union, public sector or private, are seeking information about comparable worth and job evaluation. They are determined to use their new-found knowledge to achieve more equitable salary-setting mechanisms.

Wage discrimination is a crucial factor in the phenomenon known as the feminization of poverty. The current state of the economy intensifies, rather than diminishes, the critical need to resolve the pay inequities between working women and working men. For that reason, the information contained in this report is as current and as vital as the day the comparable worth hearings opened. But it is only a beginning.

THE WAGE GAP: A PERSISTENT FACT OF LIFE

In the United States, the paycheck as a tool of discrimination between the sexes has been illegal for almost twenty years. In 1963, the Federal Equal Pay Act required that men and women performing the same work receive the same wage. In 1964, Title VII of the Civil Rights Act made it against the law to deny a woman a job or discriminate in conditions of work, including compensation and classification.

Yet a major gap exists, and continues to widen, between the average wages of a full-time female worker and a full-time male worker. In 1955, a working woman took home 64¢ for every dollar earned by a man. Current figures from the federal government's Bureau of Labor Statistics place female pay at 59¢ for every dollar earned by a male.

This figure, an over-all national average, varies according to many factors, most notably occupational field, geographic location, and race or ethnicity. In California, the average woman worker earns only 50¢ compared to the average male, and minority women earn still less. Black women's pay is 49¢ for every dollar earned by a male; Hispanic and Asian women earn 47¢; Native American women take home 44¢. The disabled woman takes home least of all—if she can even find work. She earns about 20¢ for every dollar earned by the average male worker.

While the existence and the dimension of the pay gap are recognized facts, there is no universal agreement on the cause. That basic point was made several times in the course of the hearings by presenters representing a wide range of views, including the American Civil Liberties Union's Nancy Pemberton in San Francisco; attorney Bruce Nelson in Los Angeles; and the American Electronics Association's Phil Peterson in Sacramento.

In the winter of 1979, the United States Equal Employment Opportunity Commission (EEOC) held hearings to investigate "whether wage rates of jobs in which women and minorities have been historically segregated are likely to be depressed because those jobs are occupied by these groups . . . There is evidence that the low rates of pay associated with such segregated jobs constitute the major explanation for the 'earnings gap' between minority and female workers on the one hand and white males on the other."

A major contributing factor appears to be gender segregation in jobs. More than three-quarters of all working women are crowded into only 20 occupations out of the 425 classified by the U.S. Department of Labor. These female job ghettos, or female-dominated occupations (70% or more of the employees are women), do not pay as well as male-dominated occupations. A number of experts claim that many jobs are undervalued, and consequently undercompensated, because they are held by women.

Other factors which can contribute to differences in male/female pay are labor market conditions, employee characteristics, content of work, and union membership. Statistics abound, however, to show that many previously-cited bases for pay differentials have vanished. The educational level of women has equaled that of men for some time. The behavior of women in the labor market has changed dramatically; the majority of married women work and 45% of women with children under the age of six are employed full-time outside the home. Perhaps most significant, women are not leaving the labor market or "dropping out" after a few years. Instead, since 1970, the U.S. Department of Labor has projected 25- to 35-year work lives for most women.

Overall wages for women do not reflect these realities. It is still true in 1982, as it was in 1970, that a woman with a college degree earns less than a man who never attended high school.

Bill Callahan, a business agent with the American Federation of State, County, and Municipal Employees, said at the San Francisco hearing, "The fact that women predominate in a job classification tends to depress the wage scale for that category. The use of the prevailing wage system approach to the setting of salaries perpetuates the effects of the sexually depressed wage."

The prevailing wage formula for setting salaries depends on a survey of what similar companies or government entities pay for similar job classifications.

Both B. J. Miller, an administrator with the Department of Fair Employment and Housing who appeared at the Fresno hearing, and attorney Diane Kienlen at the Los Angeles hearing echoed Callahan's belief that the use of prevailing wage rates is a significant factor in the discrepancies in pay for male-dominated and female-dominated occupations. Since the historical pattern has been to pay women less, reliance on the prevailing wage perpetuates discrimination inherent in fixing the rate of compensation in the first place, they said.

Why is the man who stacks 40-pound boxes at a rate of 30 an hour paid two-thirds more than the woman who rapidly selects, sorts, and packs the items which go into those boxes as they come down the line? In terms of importance to the company, training required, skill, ability and effort, the women's jobs compare favorably to the men's. And according to recent studies the women's jobs are even more fatiguing, Kienlen said.

This, then, is the crux of the whole question of pay inequities: what mechanism is used to set salaries? Expressed another way, the question becomes: how does one determine the value of a job?

COMPARABLE WORTH: HISTORY AND CASE HISTORIES

The concept of equal pay for work of comparable worth is not new. It has been studied, discussed, opposed, advocated, and, in some limited areas, applied over the last 40 years. In 1942, during World War II, the National War Labor Board adopted General Order 16, authorizing adjustments to wage rates paid to women to bring them into line with rates paid to men doing work of comparable quality and quantity.

The order was needed to correct persistent inequities affecting women workers. General Motors was found to set separate rates of pay for men and women working in similar operations. Aluminum Company of America had different minimum wage rates for men and women. Bendix Aviation classified jobs by sex, then set lower rates of pay for female positions. General Electric Company had separate wage rates for men and women in comparable positions; in fact, its manual stated, "for female operators, the value should be two-thirds the value for adult male workers." Westinghouse Electric Company used job evaluations but then used separate key sheets establishing lower rates of pay for women in the same labor grades as men, testified Nancy Pemberton of the ACLU in San Francisco.

Today, the National War Labor Board's order would be considered revolutionary, although separate pay scales for sex-segregated positions continue. A new wave of interest is now causing the public, business, government and policy makers to examine the concept seriously.

The impetus for wider discussion of comparable worth has come from women wage earners, who are understandably concerned by the failure to narrow the pay gap between males and females. In spite of massive changes in the participation of women in the workforce, an education level that matches that of men, equal pay laws, anti-discrimination laws, affirmative action programs, upward mobility programs, and the opening of apprenticeships to women, the earnings differential between female workers and male workers has not improved.

There is no question about the complexity of issues raised by comparable worth. But even while these difficulties are being discussed and the concept itself is being questioned, litigation, collective bargaining, legislation, and some voluntary action are bringing about some degree of movement towards pay equity.

Since demands for implementation of comparable worth theory are often described by critics as "blue sky" and essentially unrealistic, it is interesting to identify locations where comparable worth is, in fact, being addressed and implemented.

In California, the most celebrated example of the implementation of comparable worth is the City of San Jose, and that situation was widely discussed at the San Francisco hearing.

San Jose

The City of San Jose first contracted with the consulting firm of Hay Associates to do a study of management-level positions. Adjustments were then made, with some managers receiving as much as a 30% raise. A study of non-management classifications followed, and the findings were taken to the bargaining table for decisions on implementation. When negotiations broke down, a strike took place (July, 1981). This was the first time in United States' labor history that workers have struck principally over the issue of equal pay for comparable worth. The two-year agreement reached will give some traditional female occupations as much as 15% in comparable worth adjustments as well as the general pay increase and fringe benefit improvements received by other workers. Most will receive a 5% or 6% comparable worth adjustment.

Chico

In 1975, the Chico Unified School District carried out a parity study for entry-level classifications of non-certificated personnel. The district did its own, relatively simple evaluation. Factors included special knowledge, experience, scope and complexity, contact, initiative and creativity, judgment, supervision, and working conditions, with a maximum of five points for each factor. The study was implemented with no major difficulties, and the Chico School District has been a model for a number of other school districts in setting pay for classified employees.

Eureka

The Eureka City School District used the Chico survey as the basis for a point evaluation in 1977. The study showed that employees in predominantly female classes were from 1 to 16 "pay ranges" below where

they should be on the salary scale. (Each range equated to approximately $25.) Implementation was sought through collective bargaining agreements that included salary parity adjustments. One to five ranges have yet to be implemented, testified Hilda Ranton of the California School Employees Association at the Eureka hearing.

According to the California School Employees Association, at least 20 districts in the state have carried out and implemented parity studies.

Canada

Some landmark comparable worth activity has taken place in Canada. Section 11 of the Canadian Human Rights Act states, in part, "It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value." Major settlements have been made in cases involving nurses and librarians.

Nearly 500 Canadian federal government librarians won equalization adjustments ranging from $500 to $2,500 annually plus back pay of up to $5,900 each. They claimed their job was comparable to the position of historical researcher, a predominantly male classification. The Human Rights Commission compared the two jobs and found they were of equal value, based on skill, effort, responsibility, and similar working conditions.

In another instance, a strike settlement between the private firm of Canadian Kenworth and the Canadian Association of Industrial and Mechanical Workers resulted in the recognition of data process workers as equivalent to production workers.

Idaho

In the United States, the State of Idaho has made major changes in its pattern of paying state workers, none of whom are unionized. Following a 1975 Hay Associates study, the Idaho Legislature adopted a comparable worth program for 9,000 state employees in more than 1,100 job classifications. Beginning in 1977, the plan was implemented over a three-year period at a cost of some $7 million.

Overall, women's salaries increased by an average of 16.2%, while men's salaries increased by an average of 6.8%. Most lower-paid employees were given increases ranging from 20% to 30%. Although some classes suffered salary reductions after the evaluation a hold-harmless guarantee ensured that no incumbent's pay was cut. Once the civil service plan was in place, private employers began to upgrade salaries for "female" job categories in order to compete for skilled workers.

SB 459: A California Milestone

The California State Legislature passed a comparable worth statute at the close of the 1981 legislative session.

The bill was Senate Bill 459, by Senator Paul Carpenter (D-Cypress) and appears in 1981 statutes as Chapter 722. The bill was originally introduced as Assembly Bill 129, authored by then Assemblyman, now Senator, Bill Lockyer (D-Hayward). AB 129 was amended into SB 459 during the last week of the legislative session.

The bill has four essential elements:

1. It includes specific, codified intent language which recognizes the contemporary realities faced by working women.

2. It establishes the State's policy to set salaries for classifications dominated by females on the basis of comparable worth.

3. It contains the following definitions:

   (1) *Salary* means, except as otherwise provided in Section 18539.5, the amount of money or credit received as compensation for service rendered, exclusive of mileage, traveling allowances, and other sums received for actual and necessary expenses incurred in the performance of the state's business, but including the reasonable value of board, rent, housing, lodging, or similar advantages received from the state.

   (2) *Comparability of the value of the work* means the value of the work performed by an employee, or group of employees within a class or salary range, in relation to the value of the work of another employee, or group of employees, to any class or salary range within state service.

   (3) *Skill* means the skill required in the performance of the work, including any type of intellectual or physical skill acquired by the employee through experience, training, education, or natural ability.

   (4) *Effort* means the effort required in the performance of the work, including any intellectual or physical effort.

(5) *Responsibility* means the responsibility required in the performance of the work, including the extent to which the employer relies on the employee to perform the work, the importance of the duties, and the accountability of the employee for the work of others and for resources.

(6) *Working conditions* means the conditions under which the work of an employee is performed, including physical or psychological factors.

4. It requires the State Department of Personnel Administration to study comparable worth methodologies, to review salary ranges for classifications of jobs dominated by women, and to report its findings annually to the Legislature and collective bargaining units.

Preliminary findings were made available to bargaining units in the spring of 1982 for use in salary setting for fiscal year 1982/83. However, a compreher sive impiementation of the bill is expected to take several years.

COMPARABLE WORTH: THE CRITICAL QUESTIONS

Assemblyman Bill Lockyer told the Sacramento hearing that jobs should be evaluated in terms of skill, responsibility, and effort, assigning points for each factor, and then compensating according to point totals. Under this system, jobs requiring comparable skills, responsibility, and effort should command comparable wages, regardless of the sex of the worker. What Assemblyman Lockyer was discussing, of course, was the concept of equal pay for work of comparable worth.

Job Evaluation

Central to comparable worth is the job evaluation system by which one determines the relative value of jobs in an office, an organization, or an industry. The National Academy of Sciences's Committee on Occupation Classification and Analysis sent a report to the federal Equal Employment Opportunity Commission (EEOC) which analyzes the most common systems of job evaluation. The interim report of what was intended to be the decisive study of job evaluation systems stated that "three features of formal job evaluation procedures render problematic their utility for job worth assessment in a labor force highly segregated by sex."

These include a propensity to weigh evaluation factors by pegging them to current discriminatory wage rates; the subjectivity inherent in job evaluation, which in turn poses a constant threat of sexual stereotyping; and the tendency for employers to use a different job evaluation plan for each sector of the organization, making it impossible to compare the worth of jobs from one sector to another. Nevertheless, the proponents of pay equity believe bias-free data shows that job factor analysis reveals substantial underpayment of female-dominated occupations, according to Patti Roberts, an attorney and co-director of the Comparable Worth Project.

Both opponents and proponents of comparable worth are critical of job evaluation because of its subjectivity. Some opponents contrast "subjective" job evaluation to the "objective" marketplace. Meanwhile, proponents of comparable worth complain that the majority of job evaluation plans do not differ markedly from the market. They point out that job evaluation began when it was still acceptable to discriminate against women. Many of the discriminatory premises that crept in are still there and need to be removed, said Inola Henry, Resolutions Chair of the California Democratic Party, at the Los Angeles hearing.

It is undeniably difficult to make objective job evaluations, or, as attorney Nicholas Counter said in Los Angeles, "the whole job evaluation process has not yet matured to the level of a science." In practice, job evaluation can be a very political process. Who does the evaluating? It is crucial that evaluators come from the middle of the job spectrum, as well as from each end, and be both male and female, cautioned Callahan in San Francisco.

Evaluation systems have favored tasks in male-dominated jobs. Lifting heavy objects, for example, gets more points than precise assembly-line work. Responsibility for money is considered much more important than responsibility for people, the basis of many female-dominated jobs. The Willis Associates study in Connecticut is currently being examined for bias, especially in terms of the working conditions factor.

While calls for a universally accepted methodology of job evaluation are interpreted by some as deliberate footdragging in dealing with problems of pay inequity, there is widespread agreement on a need for more standardization and objectivity and for specific criteria applied consistently. In many organizations, job evaluation is simply absent, said William J. Hammond, director of personnel services for the Sacramento Municipal Utility District, at the Sacramento hearing.

Opponents of comparable worth argue that there is no proof of the linkage between job segregation and wage discrimination. That point was made quite strongly in Los Angeles by attorney Bruce Nelson. He said wholesale assumption of wage discrimination such as that made by the EEOC does not differentiate among employers who discriminate and those who do not, nor does it specify exactly how much an employee or group of employees is underpaid. Of the three methods of evaluating the worth of a given job—market value, job evaluation systems and marginal productivity analysis—only the latter has some validity in measuring wage discrimination, and even then, the analysis is only indirect and inferential, he said.

The Cost of Comparable Worth

Cost is cited as a major argument against implementation of comparable worth. Several years ago an article in Fortune magazine estimated conservatively that to raise the

aggregate pay of the country's full-time working women so that the median pay for women equaled that for men would add $150 billion a year to civilian payrolls. While this is a staggering figure in terms of impact on the economy, it is an equally staggering testimony to the wage disparity currently existing between men and women, said Oracia Baker, chair of the Sacramento County Women's Affirmative Action Caucus.

For California state employees, for example, estimates vary: $150 million; or $124 million, 2% of the State's annual personnel costs; or $40 million each year over a three-year phase-in period.

Stephen Glenn, chairman of the Personnel Committee of the California Bankers Association, charged that taxpayers and consumers will ultimately pay the cost, which will be added to the cost of goods and services. Another projection is that implementation of comparable worth would be highly inflationary. The implication of that argument is that women should accept depressed wages to keep inflation down, said Tom Hayden of the Campaign for Economic Democracy at the Los Angeles hearing, a statement which he found preposterous. Proponents argue that comparable worth need not be inflationary if done gradually over a period of time. It is not necessary to look at all jobs at once.

Still another potential cost noted by opponents of comparable worth is loss of jobs. Many industries already must compete with foreign producers who are able to pay extremely low wages. If United States' manufacturers are forced to pay higher wages because of comparable worth, production will move overseas, according to Nelson in Los Angeles and Al Libra of the California Manufacturer's Association in Sacramento. Nelson said not only employers but even trade unions such as the International Ladies Garment Workers Union are concerned about driving business abroad.

The cost of comparable worth studies themselves seems to vary widely. The San Jose study has had price tags attached that range from $300,000 to $500,000. Apparently the actual contract with Hay Associates was slightly less than $100,000; the balance of the cost was in release time and other expenses, said Bill Callahan. Dennis Smith and Hilda Ranton of the California School Employees Association stated that when employees do the studies themselves, the cost factors are virtually nil. Willis Associates guesses, based on costs to do a New York State study, that a study of California state employees would be $55,000.

What About Supply and Demand?

Many opponents of pay equity believe that the only valid means of determining job worth is the law of supply and demand operating in a free marketplace. Thus, if there is a shortage of secretaries, wages will rise to lure more workers into the field until the need is met. The reason clerical wages remain depressed is because there has never been a shortage of women willing to meet this demand. Mandated pay structures would destroy this natural balance, said C. Lynn Wade of Caterpillar Tractor at the San Francisco hearing.

The marketplace, however, is criticized for less than perfect objectivity. Market pricing of jobs is administratively easy, but the slotting of positions is done subjectively; bias is easily introduced. Market pricing or the prevailing wage perpetuates whatever discrimination exists in the marketplace and opens the door to price fixing.

The reality of the marketplace appears to be that where a job is predominantly filled by females, the wages will be low, even where there is a shortage of workers. Some form of positive action will be necessary to change the relative pay rates of jobs that have been historically female dominated, said Hellan R. Dowden of the Service Employees International Union.

Supply and demand rarely works perfectly. The experience of the nursing profession illustrates this point well. Presumably when supply is low and demand is high, there should be an increase in salary, benefits, and better working conditions. But despite the acute shortage of nurses, this has failed to happen in the nursing profession, according to Myra Snyder, executive director of the California Nurses Association.

Another phenomenon that the theory of supply and demand fails to explain occurs when men move into previously female-dominated occupations. As more men move into a field, the wages rise. An example discussed at the hearings is the teaching profession. What was once a low-paying female-dominated profession now employs substantial numbers of men, particularly in the higher elementary grades, high school and college. In the last decade or two, the earnings of teachers have been on the rise. Primary grade teachers are among the lowest paid; there is also a higher proportion of women in this category. Conversely, the best paid education professionals are administrators, the vast majority of whom are men.

There is ample precedent for intervention in the marketplace. Loans to the automobile

industry and the aerospace industry, minimum wage laws, equal pay laws, and safety regulations for the workplace are examples of actions which assume that policy decisions take precedence over the law of supply and demand, pointed out Assemblyman Lockyer.

Another important problem, in terms of real-world recruitment of employees, is raised when an employer needs an "indispensable" employee, must compete for his or her services, and must pay more than the established rate, according to CBA's Glenn. Even with internally consistent job values, the organization must still recruit personnel in the marketplace. Problems arise in job classes held down in the interest of internal equity, said Sally Reed, deputy city manager of San Jose.

Adherents of the traditional methods for establishing pay, i.e., prevailing wage and supply and demand, see comparable worth as disruptive and unworkable. Supporters of comparable worth also recognize complex issues that require careful working out. Glenn of the California Bankers Association personnel committee suggested, only slightly tongue-in-cheek, an economic impact analysis, analogous to an environmental impact report.

Collective Bargaining

Can comparable worth fit into the collective bargaining process? The AFL-CIO has adopted a policy of support for the concept of comparable worth. John F. Henning, executive secretary-treasurer of the California Labor Federation, said his organization supports comparable worth. The Coalition of Labor Union Women adopted a resolution in 1978 urging unions to treat job inequity resulting from sex and race discrimination like all other inequities needing correction, and to adopt the concept of comparable worth in all contract negotiations. Nevertheless, it takes a long time and a great deal of work to translate national and state level decisions into activity at the bargaining table, according to Mary Bergan of the Coalition of Labor Union Women.

In spite of real concerns about job leveling and the shrinking number of dollars available for wage increases, some union activists see collective bargaining as the most realistic avenue to implementing the concept of comparable worth.

JOB EVALUATION: THE STATE OF THE ART

Job Evaluation:

"The process by which an organization accurately identifies and categorizes position content information and ranks each job in an organizational hierarchy where these jobs can be valued for salary administration purposes."

David Thomsen
Director, Compensation Institute

The myriad questions engendered by the issue of comparable worth range from economics to politics to social and cultural values. But in the end, comparable worth revolves around the issue of how salaries are determined, and salaries are set, whether formally or informally, through job evaluation. Without an acceptable system of job evaluation, there is no means of computing the intrinsic worth of one job to the organization or comparing it to another in order to remunerate accordingly.

Formal job evaluation is about 100 years old, and there are a number of systems in use today. Some are the product of consultants and are proprietary, so that details are available only to a firm's clients. Other, less formalized methods may not even be called job evaluation by the organizations which practice them. All such systems, however, result in data that is used in salary setting.

Leaving aside for the moment the argument that job evaluation can never be objective or free from the historic bias against women and minorities, it is instructive to look at the four most common types of job evaluation now practiced.

Ranking

Usually confined to small organizations, ranking involves a simple arrangement of jobs from top to bottom, according to worth—worth being defined by the persons doing the ranking. The jobs are then categorized in order to assign compensation levels. Ranking makes no pretext of objectivity.

Classification

The first step in classification is to develop an idealized hierarchical structure. Each category within the structure is delineated on the basis of certain factors. These factors might include supervision, educational requirements, responsibility, or authority to expend money. Each job is fitted into the structure by comparing its characteristics with the idealized characteristics assigned to each category in the classification.

Factor Comparison

The evaluator begins factor comparison by choosing a set of "compensable factors." Then a series of benchmark jobs are chosen, and those are ranked with respect to the total worth of the job.

Once the benchmark jobs have been analyzed, the remaining jobs in the organization are compared to the benchmarks, factor by factor. Each factor is scored for each job, and then the factor scores are added up to create a total score or value for each job.

Point Methods

Point comparison is relatively simple and, therefore, is the most widely used type of job evaluation in the United States. The approach begins with the determination of a set of compensable factors. A scale is devised for each factor, each level on the scale representing greater "worth" and a specific number of points. Each job is rated on each factor separately and is assigned the corresponding number of points. The points are then totaled to obtain the job worth score.

These abstract descriptions of the most common types of job evaluation do not begin to convey the complexity involved in applying them to actual work settings. Among the job evaluation processes described during the hearings were the following:

San Jose

Probably the most widely publicized job evaluation study was the one conducted for the City of San Jose by Hay Associates. In 1978, San Jose contracted with Hay Associates for a

job evaluation study, prompted by pressure from the American Federation of State, County and Municipal Employees, Local 101. According to the Hay people, the only outstanding difference between the San Jose study and those projects undertaken by the consulting firm over the last 30 years was that "the theory of equal pay for work of comparable worth was being spotlighted in a public forum and in the collective bargaining process."

The city and the union agreed to examine differences in pay between predominately female and male job groups. The study began with a questionnaire sent to all city employees in more than 200 non-management jobs (excluding police and firefighting). The city's personnel department reviewed the questionnaires, interviewed 20% of the employees at their work locations, and drew up new specifications for every job.

Next, a committee of ten city employees met to evaluate the jobs and assign points. The committee members represented a wide variety of classifications and were evenly divided between women and men. A final evaluation required the agreement of seven of the ten committee members. The committee used the Hay Guide Chart-Profile method of job measurement in the four areas of know-how, problem solving, accountability, and working conditions.

After analysis, the jobs with their various point totals were divided into 15 grade clusters on comparability grades. A trend line was computed reflecting the average pay for all city employees. Those jobs which paid disproportionately more than indicated by the numerical ratings of value were placed above the trend line. Those jobs which paid less went below the trend line.

Those jobs held predominately by women fell from 2% to 10% below the trend line. Those jobs held predominately by men fell 8% to 15% above the trend line. For example, typist-clerks and groundskeepers were found comparable, scoring at essentially the same level of accountability, know-how, and problem solving. The typist-clerk pay was $14,300; the groundskeeper, $17,544.

The complete study was delivered to the city by Hay in December, 1980. The validity of the study was never challenged by any of the parties to the pay negotiations.

State of Washington

The consulting firm of Norman D. Willis and Associates is best known for the comparable worth studies it conducted for the State of Washington in 1974 and 1976. Representatives appeared twice at the comparable worth hearings: Martin Kinney testified at the San Francisco hearing, and Norman Willis explained his job evaluation methodology in Sacramento.

The Willis method uses a point factor plan similar in some respects to the Hay system. The first factor is *Knowledge and Skills*, subdivided into job knowledge, managerial skills, and interpersonal communication skills; the next is *Mental Demands*, broken down into latitude for independent judgment and nature and extent of problem solving; *Accountability*, subdivided into freedom to take action and nature of impact upon end result. There is also a fourth factor taken into consideration for non-managerial jobs, *Working Conditions*, including physical effort, hazards, and discomfort.

In discussing his firm's approach to job evaluation, Willis stressed that "you have to evaluate a job based on facts, not based on conclusions." Rather than relying on job descriptions, Willis asks five to ten employees in each classification under study to complete questionnaires. "That," he said, "will give you a sufficient volume of information about any particular classification" to provide the facts needed to evaluate the job.

He explained that a second important component of an actual job evaluation study, particularly in comparable worth, is the creation of a heterogeneous evaluation committee. He recommended a balanced mix of men and women with different backgrounds and experiences and an optimum number of eight or nine.

The third essential is to have each member of the evaluation committee—and the consultant as a neutral party—go over the facts for each classification and make an *independent* evaluation. The inescapable differences in judgment can be discussed and even argued on the basis of the facts until consensus is reached.

Willis conducted three studies for the State of Washington using essentially the same job evaluation methodology. The first, in 1973, was a salary study of 242 high-level state positions. In 1974, pressure from state employees concerned about the discriminatory impact of setting state salaries on the basis of prevailing wage rates in the private sector resulted in another Willis study. This "Comparable Worth Study" was the first in the country to apply job evaluation procedures to assessing the extent of sex-related differences in pay rates for jobs of comparable worth.

The 1974 study involved 121 positions. In 1976, Willis was brought back to evaluate virtually all state classifications with an eye to establishing a uniform pay structure. The studies showed that pay rates for female-dominated jobs averaged about 80% of pay rates for male-dominated jobs with the same number of job evaluation points.

Chico Unified School District

The Chico Unified School District began its wage parity study for classified employees without fanfare in 1975. Historically, the district had set salaries for classified employees on the basis of the local job market and prevailing wage rates—a method that tended to perpetuate existing salary inequities between male-dominated and female-dominated classifications.

"Previous salary determinations and classification studies have developed a set of ladders, each with a number of rungs for levels of responsibility," testified Barry Albert, Chico's director of classified personnel. "We had separate ladders for clerical, secretarial, and accounting classes; maintenance, operations, and transportation classes; and cafeteria classes. The major problem was that the ladders did not start on level ground."

The job evaluation guide used in the study contained eight categories or specific criteria for evaluating each job: special knowledge, experience, scope and complexity of work, initiative and creativeness, contact inside and outside the district, judgment, supervision, and working conditions. Each criterion was given the same weight; the maximum number of points awarded in each category was five.

Albert explained at the Sacramento hearing that the highest paid of all entry-level classifications was the custodian I. In implementing the parity study, the custodian I was made the benchmark classification, and other employee groups were brought up to parity with that class. Level I cafeteria workers received a 22.5% increase, and the clerical/secretarial/accounting group went up 12.5%. The levels or rungs of each occupational ladder were set so that each one represented a 7.5% increase.

Albert said that the study was implemented smoothly at an initial cost of $10,000 the first year, and commented:

> So we no longer do a salary study like other districts do where we go out and compare what the clerks are paid, what the cafeteria people are paid, what custodian people are paid. All we have to do is compare one class and that's our custodian I, which basically means all of our salaries that we've granted in the last five years have been across-the-board percentage adjustments to all of our employees. Because we don't have to worry about whether or not one group is being underpaid compared to another group—that's already been set and decided in the parity study.
>
> It's (the parity study) been well accepted by all the employees of the district, including the maintenance/operations/transportation group, which did not go up at that time. But it was accepted by that group, and really, with very few complaints.

A LOOK AHEAD

The four state agencies that sponsored the comparable worth hearings carefully studied the testimony and the supporting documentation. These agencies unanimously agreed that the establishment of salary-setting mechanisms based on the concept of comparable worth would be the most productive way to reduce pay inequities between women and men.

Basic to the support of comparable worth is the conviction that wages in certain classifications should be raised, not because the majority of the job holders are female, but because studies show that the skills, knowledge, and responsibility required in these classifications are not being rewarded equitably when compared to other classifications.

The comparable worth issue is economic, of course, but it also has broad social implications, as Dr. Ann Harriman pointed out at the Sacramento hearing. It was apparent throughout the hearings that one approach alone is not enough. Comparable worth must be pursued along several lines simultaneously—in legislation, in improved regulation and enforcement under existing law, in collective bargaining, in public education, and in research.

Several speakers in the course of the hearings affirmed their belief that the laws necessary to combat pay inequities are already on the books. What is needed, they say, is not new laws, but more effective enforcement of existing laws. One means of accomplishing this would be training for those responsible for enforcing those laws and regulations, specifically employees of the California Department of Fair Employment and Housing, the Division of Labor Standards Enforcement, the federal Equal Employment Opportunity Commission, and other agencies with enforcement responsibility at the state and local level.

Trade unions can bring comparable worth to the bargaining table and include women on negotiating teams. In virtually every example of a functioning pay equity system discussed during the hearings, labor unions and other employee organizations have played a pivotal role in developing a workable, acceptable system. Yet testimony made it clear that there is a wide divergence of viewpoints among trade unionists on the comparable worth issue. Those unions with a large number of female members—or the potential to attract them—are the ones most likely to consider comparable worth at the bargaining table. One outstanding exception to the preceding statement is the International Ladies Garment Workers Union. The ILGWU apparently feels that wages based on comparable worth for its predominantly female membership would have a long-term negative impact on the industry, according to Bruce Nelson, because it would drive business overseas to cheaper labor markets.

The AFL-CIO endorsed the concept of comparable worth at its national meeting more than three years ago. Yet, comparable worth rarely comes to the bargaining table, and then only at the impetus of women within individual unions.

Still, comparable worth does figure in a growing number of labor negotiations. The San Jose strike in July, 1981, the first union-sponsored job action for comparable worth, was spearheaded by the American Federation of State, County, and Municipal Employees, which has demonstrated a serious interest in pursuing the pay equity issue. Other trade unions and employee associations that have been active in this area include the Coalition of Labor Union Women, Service Employees International Union, the California School Employees Association, and the California State Employees Association.

Women who belong to unions earn 35% more than non-union women. However, workers in traditionally female jobs, especially clerical and white collar, do not tend to be organized into trade unions or other employee-advocate associations. Unions appear to be taking a fresh look at this potential pool of new members.

The implementation of comparable worth will be difficult because it entails profound changes in both current economic policy and cultural and social attitudes. There have been other, equally radical changes in American economic history—the abolition of slavery and child labor, for example—and these too were not accomplished easily or quickly. Rather, they required a lengthy period of social criticism and political lobbying before they were adopted, and it was longer still before these sweeping changes and their inherent values were absorbed into the cultural mainstream.

The concept of the minimum wage, workplace safety standards, and equal pay for equal work were also much argued and agitated over before they were added to the general body of labor law. These concepts, which today seem to embody the doctrine of

fairness and equity in the labor force, were once as radical as comparable worth.

The implementation of comparable worth, which will undoubtedly be a gradual process, can achieve more than pay equity for women and men. It can engender healthier attitudes towards all kinds of work. It can reduce the artificial barriers between male and female job ghettos. It can increase productivity by increasing self-worth and monetary rewards. Above all, comparable worth can help our society make better use of all its human resources, and end the senseless practice of constructing economic superstructures on the backs of workers whose labor is undervalued and whose importance is unrecognized.

Appendix A

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Appendix B

INDIVIDUALS AND ORGANIZATIONS SUBMITTING TESTIMONY

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American Federation of Teachers
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Appendix C

INDIVIDUALS AND ORGANIZATIONS INVITED TO SUBMIT TESTIMONY

State and Local Government

State of California

Governor Edmund G. Brown Jr.
Governor's Office of Employee Relations
State Personnel Board
Assembly Labor Committee
Assembly Public Employees and Retirement Committee
Senate Industrial Relations Committee
Senate Public Employees and Retirement Committee

Cities and Counties

Mayor Dianne Feinstein, San Francisco
San Francisco Commission on the Status of Women

Mayor Janet Gray Hayes, San Jose
Santa Clara County Commission on the Status of Women

Mayor Tom Bradley, Los Angeles
Los Angeles County Commission on the Status of Women
Compton Commission on the Status of Women
Los Angeles City Commission on the Status of Women
Pasadena Commission on the Status of Women
Los Angeles County Board of Supervisors

Mayor Phillip Isenberg, Sacramento
Sacramento Community Commission for Women
Sacramento County Board of Supervisors

Mayor Daniel Whitehurst, Fresno
Fresno City/County Commission on the Status of Women
Fresno County Board of Supervisors

Humboldt County Board of Supervisors
Humboldt County Commission on the Status of Women

Mayor Pete Wilson, San Diego
San Diego County Commission on the Status of Women
San Diego Advisory Board on Women
San Diego County Board of Supervisors

Advocacy Groups and Women's Groups

Advocates for Women, Inc.
Alliance for Displaced Homemakers
American Civil Liberties Union
American Indian Center
Asian, Inc.
Asian Law Caucus
Asian Women's Collective
Association for Latin American Women
Bay Area Urban League
Bay Area Women Entrepreneurs
Black Nurses Association
Black Teachers Caucus
Black Women Lawyers
Black Women Organized for Action
California Rural Legal Assistance
California Women in Government
California Women Lawyers
Campaign for Economic Democracy
Chicana Foundation of Northern California
Chicana Rights Project, Mexican American Legal Defense and Education Fund
Chinese for Affirmative Action
Chinese Women in Action
Coalition for Women in State Service
Coalition of Labor Union Women
Committee for Sex Equity
Displaced Homemakers Center
Economic Justice Committee
Employment Law Center
Equal Rights Advocates
Far West Business and Professional Women, Inc.
Feminist Law Collective
La Comision Femenil Mexicana Nacional
La Raza Centro Legal
League of Women Voters
Los Angeles Working Women
Mexican American Women
National Association of Negro Business and Professional Women's Clubs, Inc.
National Commission on Household Employment
National Council of Negro Women, Inc.
National Lawyers' Guild, Women's Labor Project
National Organization for Women
National Women's Political Caucus
Operation Concern

Options for Women Over 40
Project Equity
Public Advocates
Sacramento Women's Affirmative Action Caucus
Self-Help Training and Employment
Women in Apprenticeship, Inc.
Women in Politics
Women in the Economy Project
Women Lawyers of Los Angeles
Women Library Workers
Women Organized for Employment
Working Opportunities for Women
YWCA

Employers and Employer Associations

Adohr Farms
Aerospace Corporation
Almond Growers Exchange of California
American Electronics Association
Arcata Co-op
Association of Motion Picture and Television Producers
Atlantic Richfield Co.
Bank of America
Bechtel Corporation
Bunker Ramo Corporation
California Association of Independent Businesses, Inc.
California Bankers Association
California Casualty Insurance Group
California Chamber of Commerce
California Food Producers, Inc.
California Manufacturers Association
California Processors, Inc.
California Restaurant Association
California Retailers
California State and Local Elected Officials Association
California State University, Fresno
California Supervisors Association
Canners' League of California
Caterpillar Tractor
Chico Unified School District
Coalition of Apparel Industries in California
College of the Redwoods
Container Corporation of America
Del Monte Corporation
The Emporium
Engineering Services Systems Industries, Inc.
Federated Employers of the Bay Area
Fireman's Fund Insurance Co.
Hilton Hotels
Hoffman LaRoche, Inc.
Humboldt State University
Hunt-Wesson Foods
IBM
ITEK
League of California Cities
Lockheed
Manhattan Beach School District
McDonald's Corporation
Merchants and Manufacturers Association
Metropolitan Water District of Southern California
Mountain Empire Unified School District
Northrop Corporation
Occidental Life Insurance Company of California
Pacific Gas and Electric
Pacific Telephone
J.C. Penney
Residential Hotel Owners
Rosendin Electric Co.
Sacramento Municipal Utilities District
Security Pacific National Bank
Southern California Edison
State Farm Insurance
Timeshare, Inc.
TRW
United Airlines
United California Bank
United Hospital Association
Western Growers Association
Zero Foods

Unions, Employee Groups and Professional Associations

Amalgamated Clothing and Textile Workers
American Federation of Teachers
American Federation of State, County, and Municipal Employees
American Federation of TV and Radio Artists
American Society for Personnel Administration
Association of California School Administrators
California Labor Federation, AFL-CIO
California Nurses Association
California School Employees Association
California State Association of Barbers, Hairdressers, Cosmetologists, and Proprietors Union
California State Employees Association
California Teachers Association
Center for Labor Research and Education
Clerical and Allied Service Employees
Communications Workers of America
Department Store Employees
Hotel and Restaurant Employees and Bartenders
Insurance Workers of America
International Association of Machinists
International Brotherhood of Electrical Workers

International Ladies Garment Workers Union
Los Angeles City Supervisors and Superintendents Association
Los Angeles Council of School Nurses
Office Workers Alliance
Personnel Testing Council
Professional Office Workers for Effective Representation
Retail Clerks Union
Screen Actors Guild
Service Employees International Union
State Council of Culinary Workers
Union Women's Alliance to Gain Equality
United Automobile, Aerospace and Implement Workers
United Cannery and Independent Workers of the Pacific
United Electrical, Radio, and Machine Workers
United Farm Workers
United Food and Commercial Workers
United Professors of California State Colleges and Universities

Consultants and Expert Witnesses

Australia: Department of the Attorney General
Dr. Barbara Babcock, Stanford Law School
Dr. James Beatty, San Diego State University
Dr. David Belcher, San Diego State University
Dr. Catherine Burke, University of Southern California
Canadian Advisory Council on the Status of Women
Comparable Worth Project
Compensation Institute
Equal Employment Opportunity Commission
Dr. Lois Friss, University of Southern California
Dr. Ann Harriman, California State University, Sacramento
Hay Associates
Idaho State Personnel Director
Assemblyman Bill Lockyer
National Academy of Sciences
Bruce Nelson, Attorney
Winn Newman, Attorney
Dr. Helen Remick, University of Washington
Dr. Katherine B. Scibert, California State Polytechnic, Pomona
U.S. Department of Labor: Employment Standards Administration
Willis Associates

Appendix D

MAJOR CURRENT LAWS

California Equal Pay Act:

No employer shall pay any individual in the employer's employ at wage rates less than the rate paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex.

California Labor Code
Section 1197.5(a)

Federal Equal Pay Act:

No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

29 USC 206(d)

California Fair Employment and Housing Act:

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge such person from employment or from a training program leading to employment, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

California Government
Code Section 12940

Federal Civil Rights Act of 1964, Title VII:

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 USC 2000(e), *et seq.*

Appendix E

THE LEGAL CONTEXT FOR COMPARABLE WORTH

The most widely used body of law under which comparable worth suits may be brought is federal employment legislation: the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964. The difference between these two laws is important, since interpretation of that difference has been the focus of most comparable worth and related cases.

The Equal Pay Act was passed in 1963 and pertains only to discrimination on account of sex. The plaintiff bears the burden of proving that an employer pays different wages to male and female employees for equal work on jobs that require equal skill, effort and responsibility, and that are performed under similar working conditions. The plaintiff need not show that the jobs are identical, but only that the actual job requirements and performance are substantially equal. Job content, not job titles or classifications, is the measuring factor, according to attorney Paul Ostroff at the Fresno Hearing.

A violation of the Equal Pay Act may occur in the absence of any intent to discriminate. However, the Equal Pay Act has been narrowly interpreted by most courts. It does offer some redress, but there are many limitations. The federal district courts interpret differently the factors of skill, effort, and responsibility. Generally, greater physical effort, additional tasks, or increased responsibility in male-dominated jobs have led courts to find that these jobs differ substantially from comparable female-dominated jobs. Therefore, since the jobs are found not to be substantially equal, the Equal Pay Act may not be used by female plaintiffs to seek equal pay. In two examples given by Christine Curtis at the Los Angeles hearing, a male cook in charge of cooking steaks was allowed by the court to be paid more than a female cook because of the value of the steaks to the employer. A three-pound mop pushed by a male janitor entitled him to more pay than a female janitor whose mop weighed only ¼ pound.

Title VII, the courts have ruled, has a broader standard. It is an unlawful employment practice under Title VII for an employer to discriminate against any individual in compensation, terms, conditions, or privileges of employment because of the individual's race, sex, age, or national origin. Many plaintiffs have used Title VII to sue for sex-based wage discrimination, even though no member of the opposite sex held an equal but higher-paying job.

Unlike the Equal Pay Act, discriminatory intent must be proven before the employer becomes liable under Title VII. This is important, because several recent decisions have cited proof of discriminatory intent manifested by repeated examples of disparate treatment as the key to sex-based wage discrimination.

Title VII was modified by the Bennett Amendment, passed as a technical correction after the original bill had been debated. It is this amendment which has created so much controversy. The amendment states that it shall not be an unlawful employment practice under Title VII for any employer to differentiate upon the basis of sex in determining the amount of wages or compensation paid employees *if such differentiation* is authorized by Section 206(d) of the Equal Pay Act. Linda Krieger in San Francisco said the specific instances include: different wages based on a merit system, a seniority system, high quality and quantity of production, or any other factor other than sex.

Krieger explained that two interpretations of the Bennett Amendment have been advanced. One says that the amendment was designed to restrict Title VII sex-based wage discrimination claims to those that could also be brought under the Equal Pay Act. The other interpretation—held by most plaintiffs in sex-based wage discrimination claims—is that the amendment merely incorporates these four defenses into Title VII, but does not restrict claims to those which involve "equal work." The courts almost unanimously adopted the first interpretation, according to Krieger.

The courts interpreted the differences between Title VII and the Equal Pay Act as practically nil before *Gunther* and a few like cases were decided at the appellate level. The doctrine used was "in pari materia", or "the laws will be construed in harmony with one another". Thus, unless the jobs in question were equal or substantially equal, plaintiffs had no remedy under the Equal Pay Act or Title VII.

This led to decisions in which women plaintiffs routinely lost. The only way, then, that women could recover was by proving that the jobs were equal according to the Equal Pay Act definition. For example, one court found

that a city violated Title VII when it classified two women police officers in the traffic division as "policewomen", then paid them less than male officers in the same division classed as "patrolmen" and performing substantially identical tasks.

Gunther v. *County of Washington* produced a new interpretation of the relation between the Equal Pay Act and Title VII. The court held that no longer should the two laws be construed "in pari materia". The Bennett Amendment, the court said, only applies to Title VII where employees can claim one of the defenses listed in the Equal Pay Act. However, since this case was decided at the appellate level, it was binding only on subsequent cases in the Ninth Circuit, where the case was heard.

Other circuits were reaching other conclusions. *Lemons* v. *Denver* stated that the old "in pari materia" interpretation of the Bennett Amendment still applied. The court stated that paying persons employed in the nursing profession, which is a female-dominated occupation, less than persons doing comparable work in male-dominated occupations is no violation of Title VII, unless it can be shown that the differences are based on sex discrimination.

While most courts were deciding against comparable worth claims, a few judges were allowing recovery. The most important of these suits is *IUE* v. *Westinghouse*. First, the court agreed with the holding in *Gunther* that: (1) the Bennett Amendment merely incorporates into Title VII the four exceptions permitted by the Equal Pay Act, and (2) Title VII should not be construed "in pari materia" with the Equal Pay Act, ". . . since employment discrimination remedies supplement each other and should not be construed so as to ignore the differences between them."

The court went further than *Gunther*, however. This is because the jobs in *Gunther* were substantially equal—male guards versus female guards. In *IUE*, plaintiffs claimed that pay rates for women's jobs with the same evaluation ratings as men's jobs were set lower because of intentional sex discrimination. Interestingly, the court drew a distinction between *IUE* and *Lemons* because in the former, wages were set with the intent to discriminate, while in the latter, "the City (of Denver) drew no distinction between male and female employees."

The year 1980 was a fruitful one for comparable worth advocates. While the third Circuit was deciding *IUE*, an appeals court in Michigan decided *Gerlach* v. *Michigan Bell Telephone Company*. In the latter case, female engineering layout clerks claimed they were not being paid the true value of their work to the employer compared to men in the craft classifications. The *Gerlach* judge cited *IUE* to affirm that comparable worth cases were reachable under Title VII.

However, there are a number of advocates of the "free market" approach who feel that "this novel theory" (comparable worth) is simply unnecessary. In *Gunther*, *IUE*, and *Gerlach*, the plaintiffs won, some claim, not because they were paid less than men doing similar work, but because the courts found that lower pay was due to discriminatory intent on the part of the employers. In *Lemons*, the women lost because no intent to discriminate was found, despite the lower rate of pay. This, then, was the confused, divided state of the law when *Gunther* reached the U.S. Supreme Court.

The Gunther Case

Gunther was decided by the Supreme Court in June, 1981. Alberta Gunther and her co-workers were female jail matrons in the Washington County, Oregon jail. They received significantly lower pay than their male counterparts for doing what the court found was substantially equal work. The county appealed after Gunther won in the Appeals Court.

The Supreme Court found the issue involved to be narrow indeed—Gunther claimed her wages were depressed because of intentional sex discrimination; was such a claim precluded by the Bennett Amendment? The court found that it was not. The majority opinion, written by Mr. Justice Brennan, held that the purpose of the Bennett Amendment was merely to incorporate the four Equal Pay Act defenses into Title VII, so that parties claiming sex-based wage discrimination were able to sue whether or not the Equal Pay Act "equal work" standard was met. Thus, the lower court's interpretation of the amendment's purpose was contradicted.

Brennan based his opinion on the fact that the county had commissioned a study for the purpose of setting wages. The study recommended that jail matrons be paid 95% of wages paid male guards, but the county paid only 75% as much. The male guards were paid the full evaluated worth of their jobs. The failure of the county to pay the women their full evaluated worth can be attributed to sex discrimination, Brennan found.

This decision is significant for several reasons. By overturning the interpretation that the "equal work" standard is necessary for

Title VII suits of this nature, the ruling broadens the field of possible litigants. The Equal Pay Act does not apply to certain businesses engaged in retail sales, fishing, agriculture, and newspaper publishing. Now, these employees may sue under Title VII.

Second, the majority claimed that the remedial purposes of Title VII and the Equal Pay Act could be stifled by the old interpretation. For instance, a woman would have had no remedy if she were hired to fill a unique position in a business and then told that her salary would have been higher had she been male. All women holding jobs never held by men would have had no recourse in the courts.

Third, the issue of job evaluation systems is still in doubt after *Gunther*, where the county did its own evaluation. The court did not have to weigh statistics and evaluate the worth of the jobs. In *Lemons* v. *Denver*, the court alluded to the fact that there is no one universally accepted job evaluation method. Some employers contend that since there is a myriad of methods in use, the courts should not judicially mandate one technique above all others. However, other employer-defendants point out that were the courts or the EEOC to endorse a particular job evaluation scheme, employers would have a clearer idea of how to comply with equal pay laws. The resolution of this question will have to wait for future court decisions.

Fourth, *Gunther* did not decide what would happen to a woman who sues for equal pay for a job of comparable worth where an employer did not intentionally discriminate in paying her less. What is needed is a better definition of what constitutes discrimination. Women who receive lower pay than men for performing jobs of higher skill, effort and responsibility claim discriminatory intent. Employers' representatives, on the other hand, claim no one knows whether the difference in earnings between men and women is due to sex discrimination. They claim that traditional job preferences and market forces account for the fact that women earn only 57% of the salary earned by men.

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